

COURT OF APPEALS  
DIVISION TWO

Appellant.

## Rule 111, Rules of the Supreme Court

¶1 After a trial was held in his absence in 1998, a jury found appellant Phil Cisneros guilty of aggravated driving under the influence of an intoxicant (DUI) while his driver's license was suspended or revoked or in violation of a restriction and aggravated driving with a blood alcohol concentration of .10 or more while his license was suspended or revoked or in violation of a restriction. Almost ten years later, the trial court sentenced

Cisneros, then eighty-three years old, to mitigated, concurrent prison terms of three years. Cisneros appeals from his convictions and sentences.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has diligently reviewed the record without finding an arguable issue to raise on appeal. She asks us to search the entire record for fundamental error pursuant to *Clark*. Cisneros has not filed a supplemental brief. As possibly providing the “appearance of an arguable issue,” however, counsel suggests the trial court may have abused its discretion by imposing a mitigated, three-year prison term, rather than a super mitigated, 2.25-year term, arguing the court did not give appropriate weight to certain mitigating factors, including Cisneros’s advanced age and the fact that he has cancer and diabetes.

¶3 “A trial court has broad discretion to determine the appropriate penalty to impose upon conviction, and we will not disturb a sentence that is within statutory limits . . . unless it clearly appears that the court abused its discretion.” *State v. Cazares*, 205 Ariz. 425, ¶ 6, 72 P.3d 355, 357 (App. 2003). We will find an abuse of sentencing discretion only if the court acted arbitrarily or capriciously or failed to adequately investigate the facts relevant to sentencing. *State v. Ward*, 200 Ariz. 387, ¶ 6, 26 P.3d 1158, 1160 (App. 2001).

¶4 Cisneros admitted he had a prior felony DUI conviction in exchange for the state’s dismissal of its allegation of an additional prior felony conviction. At sentencing, the trial court explained the sentencing range to Cisneros and also explained that if he admitted a prior felony conviction, he would necessarily receive a prison sentence because he would

not be eligible for probation. The court noted that it had read all of the letters that had been submitted on Cisneros's behalf which, according to his attorney, numbered sixty-four. The court found Cisneros's age and health problems as mitigating factors and found as aggravating factors his having absconded for nine years until his recent arrest, his prior DUI convictions, and his failure, despite strong family support over the years, to rehabilitate himself.

¶5 We reject Cisneros's claim that the trial court failed to give sufficient weight to the mitigating circumstances. "The weight to be given any factor asserted in mitigation rests within the trial court's sound discretion." *Cazares*, 205 Ariz. 425, ¶ 8, 72 P.3d at 357. In addition, nothing in the record suggests the court failed to consider the facts relevant to sentencing or otherwise acted arbitrarily or capriciously. *See Ward*, 200 Ariz. 387, ¶ 6, 26 P.3d at 1160.

¶6 We have reviewed the entire record pursuant to our obligation under *Anders*. Having found no error, much less any that is both fundamental and prejudicial, *see State v. Henderson*, 210 Ariz. 561, ¶ 20, 115 P.3d 601, 607 (2005), we affirm Cisneros's convictions and sentences.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge